

C O P Y

in answer

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October 21, 1955

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CONCORD, N.H.

Kenneth L. Cowan, Director
Division of Inheritance Taxes
State Tax Commission
State House
Concord, New Hampshire

Re: Margarette G. Crossman Estate

Dear Sir:

Under date of October 20, 1955, Mr. Eugene C. Struckhoff, counsel for the executors of the above entitled estate, asked my opinion concerning the taxability under the provisions of RSA 86 (R.L., c. 87) of the residue of said estate should a certain compromise agreement now contemplated be entered upon. Since the administration of the tax is in your hands, I am setting forth my views on the matter to you, with the request that you give such assurances to Mr. Struckhoff as you may think appropriate under the circumstances.

It appears that the decedent by her will which was allowed in solemn form by a decree of the Rockingham County Probate Court on June 21, 1955, bequeathed the residue of her estate to trustees residing in Massachusetts, the income to be devoted to charitable purposes in that State and in North Carolina. You have determined that these States either (1) do not impose a transfer tax or death tax of any kind or (2) grant an exemption to their respective domiciliaries in favor of property passing to charities in New Hampshire.

Certain legatees under the will and others having threatened or commenced to contest and appeal the allowance of the will, the executors and the contestants or potential contestants have considered resolving the matter through the making of a compromise agreement. Under the provisions of this agreement, a portion of the residue which without the compromise would pass to the trustees for charitable purposes will, instead, be paid to the contestants in consideration of their relinquishing their objections to the allowance of the will. The contestants are of a class taxable under RSA 86:6 (R.L., c. 87, s. 1).

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In the case of In Re Burtman Estate, 95 N.H. 383, it was held that the incidence of the tax with respect to the estate of a decedent is to be governed by the disposition of his assets made by him in his will, without regard for any redistribution which may take place among the legatees or other interested persons after the probate of the will.

Upon the understanding of the facts as set forth above I regard this case as controlled by Burtman; and, hence, am of the opinion that the portion of the residue being distributed to the contestants, as a result of the compromise, not being taxable as it passed under the will, is not subject to the tax of RSA 86 (R.L., c. 87).

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml